

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

ALBENIE LAFERRIERE,

Plaintiff

v.

JOSEPH D. LEHMAN, et al,

Defendants

Civil No. 95-58-P-C

GENE CARTER, District Judge

MEMORANDUM OF DECISION ON  
PLAINTIFF'S PETITION FOR ATTORNEYS' FEES

Before the Court for action at this time is Plaintiff's Petition for Attorneys' Fees (Docket No. 67) by which Plaintiff seeks an award of counsel fees of Twelve Thousand Eight Hundred Eighty-Three Dollars and Thirty-Seven Cents (\$12,883.37) and costs of One Thousand Four Hundred Eight Dollars and Thirty-Seven Cents (\$1,408.37) pursuant to 42 United States Code section 12133 and 29 United States Code section 794a.

In response to the Petition, see Docket No. 70, Defendants assert that Plaintiff was not "a prevailing party" in the underlying litigation. Defendants point out that Plaintiff voluntarily dismissed his claims for library inaccessibility, deprivation of recreational facilities, and of the medical necessity for an electric bed. Only Plaintiff's claim in respect to the alleged inadequacy of bathroom facilities was not

dismissed by Plaintiff. This latter claim was dismissed as moot by the Court after Defendants had implemented responses to Plaintiff's living arrangements that sufficiently addressed that claim.

This Court FINDS, however, that these modifications were causally precipitated by the pending litigation, with the subject claim extant and viable, and in light of a conference of the Court and counsel at which the Court spoke frankly with counsel of its tentative views of the merits of that claim. The litigation had the effect, the Court is satisfied, in that limited respect, of effecting a material alteration of the legal relationships of the parties by bringing about a modification of Plaintiff's living conditions that significantly addressed his claim in respect to the inadequacies of the bathroom facilities provided to him previously. To that extent, Plaintiff was "a prevailing party." Plaintiff is entitled to an award for reasonable attorneys' fees related to that latter claim.

However, a careful review of the materials submitted in support of the application does not permit the Court to intelligently isolate from time and effort committed to other claims (for which Plaintiff may not properly receive an award of fees) those attributions of time, expense, and effort by counsel to the single claim on which reasonable counsel fees may be awarded. It is Plaintiff's responsibility to provide the information necessary to make such a determination. Failing such an evidentiary predicate, fees may not be awarded. It is clear

to the Court, from its review of the submitted materials, that not all of the fees sought by the Petition are attributable to this single issue. It appears that only a relatively small part, as yet undeterminable, of the total amount sought by the Petition is properly to be awarded under this ruling.

It is hereby ORDERED that counsel for Plaintiff shall file, within twenty (20) days of the date of docketing of this Order, materials of evidentiary quality sufficient to create a relevant, reliable, and focused evidentiary predicate upon which the Court may base a proper determination of the fees that may be awarded under this ruling, failing which, the application will be denied. Defendants shall have ten (10) days to respond to any such filing.

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GENE CARTER  
District Judge

Dated at Portland, Maine this 12th day of May, 1997.